

Testimony of Molly Flanagan, Great Lakes Water Resources Advocate,
National Wildlife Federation

House Bills 5711, 5712, 5713, 5714, 5715, and 5716

Michigan House Agriculture Committee

February 21, 2006

Chair Nitz, Minority Vice Chair Mayes, and Members of the Committee,

Good afternoon. My name is Molly Flanagan and I am the Great Lakes Water Resources Advocate for the National Wildlife Federation's Great Lakes Natural Resource Center. The National Wildlife Federation is testifying today in opposition to House Bills 5711 and 5712 as well as 5713, 5714, 5715, and 5716 to the extent they help implement House Bills 5711 and 5712.

The National Wildlife Federation opposes House Bill 5711 and 5712 because they effectively exempt concentrated animal feeding operations or CAFO's from all violations under the environmental provisions of the Natural Resources and Environmental Protection Act.

The National Wildlife Federation opposes House Bill 5711 first because it limits the liability of a farm or farm operation verified under the Michigan Agriculture Environmental Assurance Program (or "MAEAP") to the impairment of natural resources caused "knowingly and recklessly." As a result, farms and farm operations would be held to a lower standard of responsibility than every other person or business under the Natural Resources and Environmental Protection Act ("NREPA"), which was enacted to protect Michigan's land, air, water and wetlands.

The National Wildlife Federation also opposes House Bills 5711 and 5712 because they include provisions which are less stringent than the federal Clean Water Act. Under federal law, a state may not adopt any provision which is less stringent than the provisions of the federal Clean Water Act. House Bills 5711 and 5712 propose to adopt just such provisions.

First, as already mentioned, House Bill 5711 includes a provision that imposes liability for impairment of natural resources, including water quality, only if a farm or farm operation verified under the MAEAP causes the impairment "knowingly and recklessly." This provision is less stringent than the federal Clean Water Act, which imposes strict liability for violations of a permit, without regard to a discharger's intent or culpability.

Second, House Bill 5711 includes a provision that exempts from liability the discharge of land-applied manure if the discharge is "related" to precipitation, *provided* a farm or farm operation applies manure in accordance with a comprehensive nutrient management plan (or "CNMP") approved under the MAEAP. House Bill 5712 defines "agriculture storm

water discharge” as a precipitation-related discharge from a farm or farm operation that, at the time of discharge, is verified under the livestock system of the MAEAP and managed in accordance with the CNMP approved under that verification.

These provisions are less stringent than federal law. Under the Clean Water Act, a CAFO is liable for a discharge primarily caused by the over-saturation of a field with manure, even if precipitation plays a part. In other words, if sufficient quantities of manure are present, runoff can not be classified as agricultural storm water. Yet House Bills 5711 and 5712 would so classify such runoff, contrary to federal law.

House Bill 5711 attempts to make the MAEAP into something it is not. The MAEAP is a program designed to protect the environment through sound planning and stewardship practices, including the timely development and utilization of a CNMP. It has been used to give existing large CAFOs that had not had a discharge since January 2000 an alternative to getting a permit. MAEAP, however, does not exempt a farm or farm operation from violations of the Clean Water Act.

In fact, under MAEAP, verified complaints made against 6 facilities have resulted in these facilities needing to obtain a permit due to violations. This legislation would exempt these facilities – who discharged in violation of the law despite being registered under MAEAP -- from liability unless they had violated the law “knowingly and recklessly, an almost impossible burden to meet.”

Had House Bills 5711 and 5712 been the law before, Hartland Farms and Mericam Farms—CAFOs in south central Michigan that were operating without a permit and causing harm to nearby streams—would have been exempt from liability for causing discharges as a result of spreading manure on fields, simply because precipitation might have been a factor in the discharges. As it was, however, the CAFOs settled citizen suits brought against them, agreeing to obtain permits, meet water quality standards, and pay penalties to the state.

The National Wildlife Federation fears that this legislation may have a number of unintended and unforeseeable consequences. Clean water is too important to the state of Michigan to allow any major industrial facility that generates the amount of waste generated by a CAFO to be held to less stringent standards than those established under the Clean Water Act.

For all these reasons, the National Wildlife Federation opposes House Bills 5711 through 5716.